

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JESSE GREENLOW,	)	Case No. DISM-04-0034
	)	
Appellant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW AND ORDER OF THE BOARD
v.	)	
	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on March 22 and 23, 2005.

1.2 **Appearances.** Appellant Jesse Greenlow was present and was represented by Spencer Thal, General Counsel, Teamsters Local Union No. 117. Kari Hanson, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant mismanaged the institution's recreation program, showed favoritism to inmates, and engaged in improper transactions with inmates, including a cash transaction with the girlfriend of an inmate.

## II. FINDINGS OF FACT

2.1 Appellant Jesse Greenlow was a permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on March 27, 2004.

2.2 Appellant was employed by the Department of Corrections for approximately 25 years. As a Recreational Specialist 3, Appellant was responsible for organizing and managing a recreation program for inmates housed at the McNeil Island Corrections Center (MICC). Appellant's duties also included supervising inmate employees working in the recreation program. Appellant worked as a Recreation Specialist 3 in the main institution until December 2001, when the program and Appellant's position were transferred to the North Complex. Appellant had no previous disciplines of any type.

2.3 Respondent has adopted policy 801.005 which addresses employee relationships with offenders. The policy advises all correctional employees to engage in professional relationships with offenders and their family members and prohibits employees from entering into personal and/or unofficial business relationships with offenders or their families.

2.4 By letter dated March 22, 2004, Alice Payne, Superintendent of the McNeil Island Corrections Center notified Appellant of his dismissal effective at the end of his work day on April 6, 2004. Ms. Payne charged Appellant with neglect of duty, gross misconduct and willful violation of agency policies. Specifically, Ms. Payne alleged Appellant committed misconduct when he:

1. brought his personal printer to the institution for inmate use;
2. allowed inmates to fill out their own time cards and sign off on their hours;
3. authorized inmates to utilize two different lockers in the hobby craft area;

4. allowed an inmate to order supplies for wood items when the inmate was approved for ceramic crafts only;
5. authorized inmate recreation workers to pick which area they wanted to participate in without paying the required recreation user fee;
6. sold musical equipment to inmates through American Music, a music consignment store;
7. approved the entry of the musical equipment into MICC for the inmate to use;
8. brought in musical equipment for inmates to use;
9. sold a musical keyboard to Inmate Cory J.'s girlfriend and accepted \$250 in cash;
10. arranged a sales transaction for Inmate Cory J.'s keyboard to be purchased by another inmate through the inmate's family member;
11. posted musical equipment for sale at MICC for interested inmates to purchase.

2.5 Allegation #1. Appellant does not dispute that he brought his own printer into the institution; however, he testified the printer was used to print work related activity flyers and that bringing personal equipment for work purposes was allowed by policy 420.301. MICC field instruction 420.301 addresses Search of Employees and reads: Only those items necessary to perform an individual's official duties are authorized admittance to the Main Institution, North Complex, or outside work sites. However, Appellant, who allowed an inmate to use the printer unsupervised, failed to inform his superior, Program Unit Supervisor Greg Benjamin, or anyone else in his chain of command that he was utilizing his personal printer at work. Mr. Benjamin established that because Appellant allowed an inmate to use the printer, the institution's information technology staff should have been notified and allowed to monitor use of the printer for any inappropriate or unauthorized use.

2.6 Allegation #2. MICC has adopted field instruction 700.100, which addresses Inmate Employment and Compensation. Section V, B, #1 and #2 set out that the work supervisor for an inmate is responsible for completing and submitting inmate payroll and retaining individual inmate time cards and verifying the hours an inmate has worked. Appellant does not dispute that he allowed inmates to fill out their own time cards and sign off on their hours. The credible evidence

1 supports Appellant failed to follow DOC policy to ensure that inmate hours were correctly  
2 documented.

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4 2.7 Allegation #3. MICC has adopted field instruction 540.300, which addresses the guidelines  
5 and restrictions for use of the Hobby Shop and hobby craft activities. Section C indicates that each  
6 inmate will be assigned one locker to store their supplies. Appellant does not dispute he allowed  
7 inmates in the hobby/craft area to utilize more than one locker. Mr. Benjamin credibly testified that  
8 limiting each inmate to one locker enables corrections staff to check for contraband. The credible  
9 evidence supports Appellant failed to follow DOC policy by allowing inmates access to more than  
10 one locker.

11  
12 2.8 Allegation #4. Pursuant to field instruction 540.300, inmates are allowed only one hobby  
13 shop permit at a time. By practice, the institution allowed an inmate to only order supplies for the  
14 hobby craft they were enrolled in. However, Appellant allowed inmate Vernon J. to order wood  
15 items even though the inmate had a permit for ceramics crafts. The credible evidence supports  
16 Appellant violated DOC policy by allowing an inmate to purchase items for a hobby for which the  
17 inmate did not have a permit.

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19 2.9 Allegation #5. MICC has adopted field instruction 540.250, Recreation User Fee, which  
20 establishes the procedures for inmates participating in fee-based recreation programs. Section A  
21 requires inmates to pay a \$5 fee for enrollment in an activity. The only exception to paying the fee  
22 is for participation in an accredited education class or program. Appellant does not dispute that he  
23 waived the recreation user fee for inmates volunteering their time (e.g. working as a scorekeeper).  
24 At the time of the investigation, Appellant indicated that this practice was accepted by other  
25 supervisors; however, he presented no evidence or testimony during this hearing to corroborate this  
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1 practice. Furthermore, Mr. Benjamin testified he was never made aware that inmates were allowed  
2 to enroll for a program and not pay the required fee. In addition, he testified that although inmates  
3 may volunteer in recreational programs, they are not excused from paying fees. The credible  
4 evidence supports Appellant violated DOC policy when he waived inmate recreation user fees for  
5 inmates.

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7 2.10 Allegations #6 and #7. Inmate Music Program field instruction 540.210, Section VI, allows  
8 inmates to own one primary musical instrument (e.g. a musical keyboard or a guitar, but not both).  
9 As the music room supervisor, Appellant's duties included ensuring compliance with field  
10 instruction 540.201, processing inmate owned musical equipment into the institution, maintaining  
11 an inventory of musical instruments owned by inmates, and ensuring that the value of the  
12 instruments did not exceed \$300.

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14 2.11 Section VII of the field instruction 540.210 outlines the process the inmate must follow to  
15 obtain permission to have the musical instrument in his cell. The inmate must complete an "In-  
16 Room Music Request" form and submit it for approval by the music program supervisor and the  
17 unit supervisor. In addition, field instruction 540.210 limits the cumulative value of all inmate-  
18 owned musical equipment to no more than \$300. On October 25, 1999, a change to field instruction  
19 540.210 was adopted which prohibited inmate family members from purchasing musical equipment  
20 on behalf of inmates and requiring all personally owned equipment be purchased by the inmate.

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22 2.12 Section VII of field instruction 540.201 addresses the procedure for the inmate to purchase  
23 musical instruments and requires the inmate to review music catalogues from authorized vendors,  
24 make a selection, fill out the requisite vendor order form, and provide the form to the music  
25 program supervisor. Subsequently, Appellant was required to review the request form, check the  
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1 instrument's price, and determine whether the item was unauthorized per policy. If authorized,  
2 Appellant was responsible for forwarding the order form to the institution's business office, where  
3 the actual purchase was made on behalf of the inmate and the cost deducted from the inmate's  
4 account. Upon receipt of the musical equipment, Appellant was responsible for inspecting it for  
5 contraband, logging receipt of the equipment, and arranging for the inmate to pick up the  
6 equipment. According to Superintendent Payne, Appellant had no reason to contact vendors  
7 directly or make any calls on behalf of inmates unless there was a problem with the purchased item.

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9 2.13 On November, 19, 2002, Recreation Specialist 3 Emily Slagle conducted an inventory of  
10 equipment owned by inmates enrolled in the institution's music program. The results of the  
11 inventory showed numerous irregularities and violations of field instruction 540.210. For instance,  
12 Inmate Ralph P. had a substantial amount of musical equipment that he was not authorized to have  
13 in his possession, some of his musical equipment appeared to have a value over the \$300 and, in  
14 2000, family members purchased musical equipment on behalf of Inmate Ralph P. The number of  
15 items in Inmate Ralph P.'s possession also exceeded the items listed on his inventory list, which  
16 was kept by Appellant. Inmate Ralph P. indicated to Ms. Slagle that one item, an SP808 Groove  
17 Sampler, was valued at \$1800.

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19 2.14 Ms. Slagle was unable to locate the necessary receipts for several pieces of large equipment  
20 in Inmate Ralph P.'s possession, including the SP 808. Inmate Ralph P. was directed to obtain  
21 receipts in order to prove ownership of his equipment. Subsequently, Inmate Ralph P.'s father  
22 provided purchase documentation that supports the SP 808 Groove Sampler was purchased by him  
23 on behalf of his son for \$1400. Approval of the Musical Instrument Sign-off sheet for the SP 808  
24 Groove Sampler was made in 1998 by a temporary recreational specialist, who was supervised by  
25 Appellant.

1  
2 2.15 Inmate Ralph P. also indicated that Appellant sold equipment to inmates through a  
3 consignment shop. Inmate Ralph P. described an instance in which his parents purchased a piece of  
4 equipment, a Yamaha QY 70 drum machine that Appellant had sold to a consignment store. A  
5 money order dated February 25, 2000, shows that Ralph P.'s father made the \$300 purchase from an  
6 employee of American Music. On February 29, 2000, Appellant signed a "musical instrument sign  
7 off sheet" which indicates the cumulative value of the Yamaha QY-70 and some other musical  
8 items did not exceed \$300.

9  
10 2.16 A preponderance of the credible evidence supports Appellant failed to comply with field  
11 instructions when he authorized inmate Ralph P. to possess the SP808; which was valued at more  
12 than \$300, when he allowed Ralph P.'s father to make a purchase on behalf of the inmate in 2000,  
13 when he failed to ensure that Inmate Ralph P. submitted the necessary form to obtain authorization  
14 to purchase musical equipment; when he allowed Ralph P. to possess more than one primary piece  
15 of musical equipment; and when he authorized Inmate Ralph P. to own musical equipment with a  
16 cumulative value of over \$300. However, Respondent provided no preponderance of evidence to  
17 prove Appellant sold musical equipment to American Music for subsequent sale to inmates.

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19 2.17 Allegation #8. On November 20, 2002, Inmate D. provided Ms. Slagle with a musical  
20 keyboard, which he stated he borrowed from Appellant. Appellant testified that prior to  
21 transferring to the North Complex, he brought his own musical keyboard for use as a teaching tool.  
22 He testified, however, that he never took the keyboard to the North Complex. Because Appellant  
23 was the music room supervisor and was responsible for all instruments in the possession of inmates,  
24 we find more likely than not, that the keyboard belonged to Appellant and that he allowed inmate

1 D. to borrow the keyboard. By allowing an inmate to borrow his personal keyboard, Appellant  
2 violated Policy 810.005, which prohibits favoritism.

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4 2.18 Allegations #9 and #10. During the investigation, Inmate Corey J. described two music  
5 equipment sales transactions between him and Appellant. The first occurred in 2001 when Inmate  
6 Cory J. agreed to pay Appellant \$200 to purchase a keyboard from Appellant. Corey J. indicated  
7 the sales transaction occurred with the assistance of his girlfriend, Bridgett C., who agreed to meet  
8 Appellant at the Steilacoom Dock to pay cash for the keyboard. Per the alleged agreement,  
9 Appellant would authorize the inmate to possess the keyboard after receipt of payment. When  
10 interviewed during the initial investigation, Bridgett C. indicated that she met with Appellant at the  
11 dock and paid him \$250 in cash. Bridgett C. identified the individual she met with as "Greenlow."  
12 In addition, Superintendent Payne interviewed Bridgett C. and found her to be forthcoming and  
13 cooperative. In addition, Bridgett C. was able to describe Appellant's appearance and clearly  
14 recalled the cash transaction at the dock. On a Musical Instrument Sign off Sheet dated April 9,  
15 2001, Appellant authorized Cory J. to possess a Yamaha PSR keyboard and other items and the  
16 cumulative value was listed at \$200; however, there were no vendor forms to support the  
17 transactions made in accordance with policy 540. 210 and no receipts existed to document the value  
18 of the items.

19  
20 2.19 Neither Cory J. nor Bridgett C. testified before us. Therefore, in making a determination on  
21 whether Appellant engaged in this sales transaction, we have given weight to the Superintendent's  
22 assessment of Bridgett's credibility, to the lack of documentation which exists to support that Cory  
23 J. followed the institution's process for obtaining the keyboard, as well as Appellant's authorization  
24 for Cory J. to own the keyboard when documentation and receipts did not exist to support a  
25 legitimate purchase. Therefore, we find that a preponderance of the credible evidence establishes



1 Appellant sold his keyboard to Cory J. and engaged in a cash transaction with Bridgett C. for  
2 payment of that sale.

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4 2.20 The second transaction alleged by Cory J. involved a drum machine Cory J. wanted to  
5 purchase from Appellant. However, Cory J. did not have the necessary money. Cory J. described a  
6 transaction where he pre-arranged with Appellant to sell his keyboard to another inmate and then  
7 purchase the drum machine from Appellant. Insufficient evidence exists to prove Appellant  
8 engaged in a second cash transaction with another inmate's family. However, on April 18, 2002, an  
9 "Outgoing Offender Property" form lists Cory J.'s keyboard and other musical equipment as items  
10 to be sent out of the institution, but the form does not contain a name or mailing address of the  
11 location the items were supposed to be sent. Those specific details were required for the transfer of  
12 property to occur. Therefore, transfer of the property could not have occurred. However, On May  
13 28, 2002, Appellant initialed a document which indicated that Cory J.'s inventory included a drum  
14 machine.

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16 2.21 Again, there is no paperwork to support that Cory J. completed the necessary documentation  
17 to purchase these instruments per policy, nor do any receipts exist to support the keyboard and drum  
18 machine were purchased from authorized vendors as required by policy. In addition, when Ms.  
19 Slagle conducted the physical inventory, Cory J. was in possession of a drum machine. Therefore,  
20 we find a preponderance of the credible evidences proves that Appellant authorized Cory J. to  
21 possess musical equipment without requiring the necessary musical vendor order form and without  
22 ensuring the cumulative value of the equipment did not exceed \$300.

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24 2.22 Allegation #11. Respondent failed to provide any evidence that Appellant posted flyers of  
25 musical equipment for sale at the institution.

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2 2.23 Superintendent Alice Payne was Appellant's appointing authority when the discipline was  
3 imposed. Prior to imposing the discipline, Superintendent Payne met with Appellant and his  
4 representative on December 9, 2003. Superintendent Payne considered Appellant's responses at the  
5 meeting as well as his written response to the charges. She found, however, that Appellant's  
6 responses to the charges were not believable. Ms. Payne determined that Appellant neglected his  
7 duty when he engaged in bartering and inappropriate financial transactions with inmates and their  
8 families, failed to responsibly manage the Music Program by allowing inmates to possess multiple  
9 instruments, and allowed inmates to own instruments with a cumulative value of \$300. Ms. Payne  
10 also found that Appellant failed to adequately manage the recreation program by allowing inmates  
11 to account for their own hours and allowing inmates to participate in recreational programs without  
12 paying fees.

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14 2.24 Superintendent Payne concluded that Appellant disregarded institution policies and  
15 compromised his safety and the safety of the institution by showing favoritism to inmates. She  
16 concluded that termination was the appropriate sanction because Appellant failed to act ethically,  
17 failed to demonstrate accountability, and by his actions, he destroyed her ability to rely on him to  
18 continue in a position that functioned independently. Although Superintendent Payne considered  
19 other less punitive sanctions, she concluded that Appellant's actions were so egregious that he  
20 could not continue to work in an institutional setting because his actions demonstrated a disregard  
21 of the institution's rules and regulations.

### 22 23 **III. ARGUMENTS OF THE PARTIES**

24 3.1 Respondent argues a preponderance of the evidence supports Appellant failed to manage  
25 and oversee his recreation specialist duties in accordance with the department's procedures and  
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1 policies and engaged in inappropriate transactions with inmates that included bartering and cash  
2 transactions. Respondent argues that Appellant worked independently and was in a position of  
3 trust, but that his actions created substantial security concerns that warranted dismissal.  
4 Respondent argues that in addition to violating numerous departmental policies, Appellant showed  
5 favoritism toward several inmates and therefore, placed himself in a vulnerable position of inmate  
6 manipulation. Respondent argues that Appellant neglected his duty, willfully violated agency  
7 policies and that his misconduct rose to the level of gross misconduct. Respondent asserts that  
8 Appellant's breach of trust is irreparable and that the termination should be affirmed.

9  
10 3.2 Appellant argues that the state's evidence to support any misconduct on his part is  
11 inadequate and insufficient to support his termination. Appellant admits that he brought his own  
12 printer and musical keyboard into the institution, but asserts that his reasons for doing so were work  
13 related and did not violate agency policy. Appellant denies he engaged in any of the other  
14 allegations and contends the state's entire case is speculative and based on hearsay. Appellant  
15 asserts that any statements given by inmates during the investigation should not be believed nor  
16 relied upon because the inmates did not testify. Appellant asserts that he is a long-term employee  
17 with no history of disciplinary action and that his appeal should be granted.

#### 18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.  
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22 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
23 the charges upon which the action was initiated by proving by a preponderance of the credible  
24 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
2 Corrections, PAB No. D82-084 (1983).

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4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
6 of Social & Health Services, PAB No. D86-119 (1987).

7  
8 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
9 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
10 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
11 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

12  
13 4.5 Willful violation of published employing agency or institution or Personnel Resources  
14 Board rules or regulations is established by facts showing the existence and publication of the rules  
15 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
16 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

17  
18 4.6 Respondent has met its burden of proving by a preponderance of the credible evidence that  
19 Appellant neglected his duty and violated agency policy when he brought his personal printer into  
20 the institution and allowed an inmate to use it without supervision; when he allowed inmates to fill  
21 out their time cards and sign off on their hours; authorized inmates to use two different lockers;  
22 allowed an inmate to order supplies for a craft for which he was not registered; waived the  
23 recreation user fees for inmates; allowed Inmate Ralph P. and to possess more than one main  
24 instrument, to possess instruments totaling more than a cumulative value of \$300, and approved

1 purchase of an instrument by Ralph P.'s parents; allowed Inmate D. to borrow his personal  
2 keyboard; and a keyboard to Inmate Cory J. and accepted cash payment from Cory J's girlfriend.

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4 4.7 Appellant was fully aware of DOC policies and expectations requiring him to conduct his  
5 duties in a professional and ethical manner and prohibiting him from bartering or making personal  
6 deals with offenders and showing favoritism. Appellant's actions clearly demonstrate a pattern of  
7 favoritism to some offenders, and his failure to enforce the institution's rules by allowing inmates to  
8 account for their own hours, by allowing inmates to own more than one main instrument, by  
9 authorizing inmates to own musical instruments valued at more than \$300, and by engaging in a  
10 cash transaction with an inmate's girlfriend, placed him at risk for manipulation. Appellant's  
11 behavior compromised his ability to adequately manage the Recreational Program at MICC, and he  
12 violated the trust placed in him by the institution. Therefore, Appellant's misconduct rose to the  
13 level of gross misconduct.

14  
15 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to  
16 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
17 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
18 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
19 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
20 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

21  
22 4.9 Even though Respondent failed to prove several of the allegations, Appellant violated the  
23 trust inherent in his position to conduct himself in a professional and ethical manner, especially  
24 when he engaged in a financial transaction with the girlfriend of an inmate. Appellant damaged his  
25 credibility and compromised his effectiveness as an employee of a correctional institution by  
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1 showing favoritism to inmates. Furthermore, Appellant's misconduct undermined the institution's  
2 trust in him and placed him at risk for inmate manipulation. Appellant's misconduct with respect to  
3 this cash transaction alone was so egregious that it warrants the most severe disciplinary sanction  
4 available. Therefore, Appellant's dismissal should be affirmed and his appeal should be denied.

5  
6 **V. ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jesse Greenlow is denied.

8  
9 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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11 WASHINGTON STATE PERSONNEL APPEALS BOARD

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14 Busse Nutley, Vice Chair

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16 Gerald L. Morgen, Member  
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